

Illegal Appointment

Policy	It is the policy of the DGS that all staff appointments be legal and comply with all applicable civil service laws and rules (discussed in this section).
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Purpose	The purpose of this section is to provide standards and guidelines to facilitate staff investigations of the legality and appropriateness of appointments and the correction of those found to be illegal.
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Overview	<p>An appointment occurs when an individual is offered an appointment to a position, accepts the offer, and begins performing the duties of the position.</p> <p>An alternate range change within a deep class is considered an appointment the same as an appointment to a class and must be treated as such.</p> <p>Government Code Section 19050 requires that all civil service appointments be made in accordance with the Civil Service Act and the State Personnel Board (SPB) rule. This ensures that employees are treated equitably and consistently and it also serves the public's interest in preventing patronage and similar abuse of the State's employment system.</p> <p>However, occasionally appointments are made that are inconsistent with applicable laws and rules. Such appointments may result from mistakes or misinformation, or they may be deliberate attempts to manipulate the system.</p> <p>When it is discovered that an individual who has been appointed might not have had eligibility for appointment to the class or particular "deep" class alternate range at the time of the appointment, the State Personnel Board (SPB) must be informed of the situation. If the DGS determines it was an illegal appointment, the employee must NOT be sent home or returned to his/her former position. Only the SPB can void an appointment, and that can occur only after the individual has been given due process.</p>

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Illegal Appointment, Continued

Overview (continued)

Whenever an illegal appointment occurs, appropriate corrective action must be taken. Leaving an illegal appointment in effect can have the following detrimental effects:

- Such appointments circumvent and/or contradict the laws and rules that are intended to govern civil service rights and transactions.
- They cause inconsistencies that jeopardize the SPB's overall objective of evenly and equitably administering the civil service system.
- They often give employees unfair and unearned advantages over others whose appointments have been processed in the normal manner.

Examples of illegal appointments

The following are some examples of illegal appointments:

- Improper clearance of a certified list resulting in non-eligibility.
- Transfer from exempt to civil service with no prior civil service eligibility.
- Person competes in exam who is later found not to meet the minimum qualifications.
- Appointment to the incorrect range of a deep class
- A short duration appointment intended to give eligibility for a future movement.
- Appointment to a class, location, or time base made solely to give eligibility to transfer to another class, location, or time base.
- Promotion of an employee to one class that is made solely to provide a subsequent movement at a higher class and salary.
- Failure to obtain a medical clearance prior to an appointment, but in conjunction with another action.

Process

The following phases for handling an illegal appointment are discussed in detail in Personnel Management Policy and Procedures Manual (PMPPM) Section 395.

- Investigating
- Determining appointment legality and good faith
- Selecting corrective/remedial actions
- Taking action
- Appealling

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Illegal Appointment, Continued

Investigating	This section of the PMPPM (395) covers the procedures and resources that should be used to gather the facts that are needed to evaluate the circumstances and legality of an appointment.
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Determining appointment legality/good faith	<p>Once the facts and circumstances have been determined, they should be reviewed in light of:</p> <ol style="list-style-type: none">1. the specific laws and rules that govern the specific type of transaction in question and2. SPB Rule 8, which sets good faith standards for both appointing powers and appointees to follow in their actions under the civil service system.
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The following questions should be answered during the analysis:

1. Was the appointment legal?
2. Did the DGS' intent in making the appointment meet the good faith standards contained in part (a) of SPB Rule 8?
3. Did the employee's actions in accepting the appointment meet the good faith standards contained in part (b) of SPB Rule 8?

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Illegal Appointment, Continued

Selecting corrective and remedial actions

When the above two steps lead to a conclusion that an appointment is illegal, the C&P Analyst submits the data, in writing, to the SPB. SPB staff must decide on the appropriate combination of corrective and remedial action. Key points that must be decided upon at this stage include:

- Appointment cancellation – this action retroactively cancels the status or merit-related aspects of the appointment.
- Alternative appointments – when an appointment of a good faith appointee is canceled, it should be determined if the work performed would have been covered by an alternative appointment for which the appointee would have been eligible. When this is the case, the alternative appointment should be made retroactively to replace the canceled appointment.
- Compensation – when appointments are canceled, any needed pay rate corrections are made at the time of the cancellation. In addition, Rules 8 and 266 determine if compensation adjustments are to be retroactive. Rule 9 distinguishes compensation from the status-related items impacted by an appointment cancellation.
- Remedial actions – when an appointment is canceled, and the appointee acted in good faith, efforts should be taken to mitigate the negative effects that the cancellation has upon the employee.
- Sanctions – a determination is made as to whether anyone should be held at fault for the illegal appointment and if any punitive action or other sanctions should be taken against him/her
- Letting the action stand – SPB will make this determination and notify the department.

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Illegal Appointment, Continued

Taking action	This section of the PMPPM (395) describes the process for taking the actions decided upon in the step above. This includes the advance notice and the right to respond required by Rule 60.
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Appeal rights	This section of the PMPPM (395) describes the right of the DGS and /or the employee to appeal an appointment cancellation or correction.
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Other information	The PMPPM section (395) contains several examples of illegal appointment processing in addition to "How to Obtain an Employee's Work History."
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Resources	The following table depicts the various resources available regarding illegal appointments.
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Resource	Section
Law and Regulation http://www.dpa.ca.gov/statesys/dpa/laws.htm http://www.dpa.ca.gov/statesys/dpa/oalrules.htm	GC Sections 18525, 18670, 18671, 19050, 19051, 19257, 19257.5, 19680, 19682, 19683, 19764, 19572, 19583.5 Rule 8, 9, 60, 60.1, 266, 266.1, 302.2, 302.3
Personnel Management Policy and Procedures Manual (PMPPM)	395
Responsible Control Agency	SPB
SPB/DPA Policy Memos http://www.spb.ca.gov/pinkies.htm	SPB Pinkie 10/8/02
Other	
SPB California Code of Regulations	www.spb.ca.gov www.calregs.com